Zul Azuandi bin Aziz v Public Prosecutor

HIGH COURT (KANGAR) — CRIMINAL APPEAL NO RA-42S-2–07 OF 2020
ARIK SANUSI JC
14 MAY 2021

Criminal Procedure — Appeal — Appeal against conviction and sentence — Appellant charged under s 15(1)(a) of Dangerous Drugs Act 1952 for administering to himself methamphetamine — Appellant convicted and sentenced to six years imprisonment, two strokes of whipping and two years police supervision — Whether conviction and sentence was correct and in accordance with law — Dangerous Drugs Act 1952 ss 15(1)(a) & 39C(1)

The appellant was charged before the Sessions Court in Kangar for an offence under s 15(1)(a) of the Dangerous Drugs Act 1952 ('the DDA') which was punishable under s 39C(1) of the DDA for administering to himself methamphetamine. The appellant had claimed trial to the charge. At the conclusion of the trial, the sessions court judge had found the appellant guilty of the offence and had sentenced the appellant to six years imprisonment, two strokes of whipping and two years police supervision. Dissatisfied, the appellant had appealed to this court against the whole decision of the learned sessions court judge. The issue for consideration was whether the conviction and sentence passed by the learned sessions court judge under s 15(1)(a) of the DDA which was punishable under s 39C(1) of the DDA was correct and in accordance with the law. The appellant submitted that the prosecution had failed to prove that the appellant had two previous convictions under s 15(1)(a) of the DDA. Consequently, the appellant was not liable to be convicted and punished for the offence under s 15(1)(a) of the DDA which was punishable under s 39C(1) of the DDA. Hence, the sentence imposed by the learned sessions court judge under s 39C(1) of the DDA ought to be set aside and substituted with a lesser punishment under s 15(1)(a) of the DDA, in case the appellant's conviction under s 15(1)(a) of the DDA was sustained.

Held, allowing the appeal:

(1) To secure a punishment under s 39C(1) of the DDA, the onus lied on the respondent to prove that the appellant had two previous convictions under s 15(1)(a) of the DDA, failing which the appellant would only be liable to a punishment provided for under s 15(1)(a) of the DDA. For the purpose of proof of the appellant's two previous convictions under s 15(1)(a) of the DDA, the respondent had tendered the appellant's

records of conviction ('exh P9') through the Assistant Registrar of the Kangar Court ('SP3') (see paras 12–13).

(2) The Registration of Criminals and Undesirable Persons Act 1969 ('the Act') was a specific Act enacted by the Parliament to provide for the registration of criminals. As the Act was a specific law regulating matters relating to the registration of criminals in this country, the Act shall prevail over s 400 of the Criminal Procedure Code ('the CPC'), which was a general law. Thus, the respondent's submission on the admissibility of one's previous conviction under s 400 of the CPC and the Evidence Act 1950 could not sustain (see paras 34–35).

(3) Since s 400 of the CPC, which was a general law, did not define who was the 'officer' that could prove one's previous conviction, by reading such provision harmoniously with the Act, which was a specific law relating to the registration of criminals, it was apparent that the 'officer' referred to in the CPC was the Registrar of Criminals appointed by the Yang di-Pertuan Agong under s 3 of the Act, whose power among other things was to keep and maintain the particulars of any conviction or sentence in respect of a registrable offence as specified in the First and Second Schedules of the Act. Since there was no evidence that SP3 was appointed by the Yang di-Pertuan Agong pursuant to s 3 of the Act, SP3 had no locus, qualification and competency under the Act to confirm, to tender and to prove the appellant's previous convictions under s 15(1)(a) of the DDA in the court. Therefore, exh P9 which was tendered by the prosecution to prove the appellant's two previous convictions under s 15(1)(a) of the DDA was inadmissible and had no evidential value. As a result, the conviction and sentence imposed by the sessions court judge on the appellant under s 15(1)(a) which was punishable under s 39C(1) of the DDA was wrong and not in accordance with the law and hence, should be substituted with a conviction and punishment under s 15(1)(a) of the DDA (see paras 37 & 39–40).

(4) The appellant had spent 11 months in remand and he had no previous conviction. Under s 15(1)(a) of the DDA, the court had the discretion to impose either a punishment of fine or an imprisonment. It would not be appropriate to put the appellant again behind bars. Therefore, a fine of RM3,000 from the maximum of RM5,000 in default five months imprisonment and two years police supervision under s 38B of the DDA with effect from the date of the disposal of the appeal, would be the appropriate and just punishment imposed on the appellant, and it was not manifestly inadequate (see paras 43–44).

[Bahasa Malaysia summary

Perayu didakwa di hadapan Mahkamah Sesyen Kangar atas kesalahan di bawah s 15(1)(a) Akta Dadah Berbahaya 1952 ('ADB') yang boleh dihukum di bawah

s 39C(1) ADB kerana memasukkan methamphetamine ke dalam diri sendiri. Perayu telah menuntut perbicaraan terhadap pertuduhan itu. Pada akhir perbicaraan, hakim mahkamah sesyen telah mendapati perayu bersalah atas kesalahan itu dan telah menjatuhkan hukuman enam tahun penjara, dua sebatan dan dua tahun pengawasan polis kepada perayu. Tidak berpuas hati, perayu telah merayu kepada mahkamah ini terhadap keseluruhan keputusan hakim mahkamah sesyen yang bijaksana. Isu untuk pertimbangan adalah sama ada sabitan dan hukuman yang dijatuhkan oleh hakim mahkamah sesyen yang bijaksana di bawah s 15(1)(a) ADB yang boleh dihukum di bawah s 39C(1) ADB adalah betul dan mengikut undang-undang. Perayu berhujah bahawa pihak pendakwaan telah gagal membuktikan bahawa perayu mempunyai dua sabitan lampau di bawah s 15(1)(a) ADB. Akibatnya, perayu tidak boleh disabitkan dan dihukum atas kesalahan di bawah s 15(1)(a) ADB yang boleh dihukum di bawah s 39C(1) ADB. Oleh itu, hukuman yang dijatuhkan oleh hakim mahkamah sesyen yang bijaksana di bawah s 39C(1) ADB sepatutnya diketepikan dan digantikan dengan hukuman yang lebih ringan di bawah s 15(1)(a) ADB, sekiranya sabitan perayu di bawah s 15(1)(a) ADB dikekalkan.

Diputuskan, membenarkan rayuan:

(1) Untuk menjamin hukuman di bawah s 39C(1) ADB, tanggungjawab terletak pada responden untuk membuktikan bahawa perayu mempunyai dua sabitan lampau di bawah s 15(1)(a) ADB, jika gagal, perayu akan hanya boleh dikenakan hukuman yang diperuntukkan di bawah s 15(1)(a) ADB. Bagi tujuan pembuktian dua sabitan lampau perayu di bawah s 15(1)(a) ADB, responden telah mengemukakan rekod sabitan perayu ('eksh P9') melalui Penolong Pendaftar Mahkamah Kangar ('SP3') (lihat perenggan 12–13).

(2) Akta Pendaftaran Penjenayah dan Orang yang Tidak Diingini 1969 ('Akta') adalah Akta khusus yang digubal oleh Parlimen untuk menyediakan pendaftaran penjenayah. Memandangkan Akta tersebut merupakan undang-undang khusus yang mengawal selia perkara yang berkaitan dengan pendaftaran penjenayah di negara ini, Akta tersebut akan mengatasi s 400 Kanun Tatacara Jenayah ('KTJ'), yang merupakan undang-undang am. Oleh itu, hujahan responden mengenai kebolehterimaan sabitan lampau di bawah s 400 KTJ dan Akta Keterangan 1950 tidak dapat dikekalkan (lihat perenggan 34–35).

(3) Memandangkan s 400 KTJ, yang merupakan undang-undang am, tidak mentakrifkan siapa 'pegawai' yang boleh membuktikan sabitan lampau seseorang, dengan membaca peruntukan sedemikian secara harmoni dengan Akta, yang merupakan undang-undang khusus yang berkaitan dengan pendaftaran penjenayah, adalah jelas bahawa 'pegawai' yang disebut dalam KTJ ialah Pendaftar Penjenayah yang dilantik oleh Yang di-Pertuan Agong di bawah s 3 Akta, yang kuasanya antara lain adalah

untuk menyimpan dan mengekalkan butir-butir mana-mana sabitan atau hukuman berkenaan dengan kesalahan boleh daftar seperti yang dinyatakan dalam Jadual Pertama dan Kedua Akta. Oleh kerana tiada bukti bahawa SP3 dilantik oleh Yang di-Pertuan Agong menurut s 3 Akta, SP3 tidak mempunyai lokus, kelayakan dan kompetensi di bawah Akta untuk mengesahkan, membuat pengemukaan dan membuktikan sabitan lampau perayu di bawah s 15(1)(a) ADB di mahkamah. Oleh itu, eksh P9 yang telah dikemukakan oleh pihak pendakwaan untuk membuktikan dua sabitan lampau perayu di bawah s 15(1)(a) ADB tidak boleh diterima dan tidak mempunyai nilai keterangan. Akibatnya, sabitan dan hukuman yang dijatuhkan oleh hakim mahkamah sesyen ke atas perayu di bawah s 15(1)(a) yang boleh dihukum di bawah s 39C(1) ADB adalah salah dan tidak mengikut undang-undang dan oleh itu, hendaklah digantikan dengan sabitan dan hukuman di bawah s 15(1)(a) ADB (lihat perenggan 37 & 39–40).

(4) Perayu telah meluangkan 11 bulan dalam reman dan dia tidak pernah disabitkan kesalahan sebelumnya. Di bawah s 15(1)(a) ADB, mahkamah mempunyai budi bicara untuk mengenakan sama ada hukuman denda atau penjara. Adalah tidak wajar untuk meletakkan perayu sekali lagi di penjara. Oleh itu, denda RM3,000 daripada maksimum RM5,000 jika ingkar penjara lima bulan dan dua tahun pengawasan polis di bawah s 38B ADB berkuat kuasa dari tarikh rayuan dilupuskan, adalah hukuman yang sesuai dan adil dikenakan ke atas perayu, dan ia bukan secara nyata tidak mencukupi (lihat perenggan 43–44).]

Cases referred to

Abdullah bin Atan v PP and other appeals [2020] 6 MLJ 727, FC (refd)
Azizy bin Samsudin v PP [2020] MLJU 1967; [2020] 1 LNS 1725, HC (refd)
Mohd Azmeer Yusnar bin Romli lwn Pendakwa Raya [2020] MLJU 1905, HC (refd)
PP v Muhammad Zikiri bin Ramli [2021] MLJU 821, HC (refd)

Legislation referred to

Criminal Procedure Code s 400
Dangerous Drugs Act 1952 ss 15(1)(a), 38B, 39C(1), First Schedule
Evidence Act 1950 ss 57, 60
Registration of Criminals and Undesirable Persons Act 1969 ss 2, 3, 7, First Schedule, Second Schedule

Devandran a/l Subramaniam (Devandran & Co) for the appellant.
Mohd Izham bin Ali (Deputy Public Prosecutor, Perlis State Legal Advisor's Office) for the respondent.

Arik Sanusi JC:

INTRODUCTION

[1] The respondent in this case had appealed against the decision of this court in setting aside the conviction and punishment imposed by the learned Sessions Court Judge of Kangar on the appellant under s 15(1)(a) of the Dangerous Drugs Act 1952 (Act 234) ('the DDA') which is punishable under s 39C(1) of the same Act and substituted it with a conviction and punishment under s 15(1)(a) of the DDA.

[2] In this regard, the punishment of six years imprisonment from the date of remand, two strokes and two years police supervision passed by the learned sessions court judge were substituted with a fine of RM3,000 in default five months imprisonment.

BACKGROUND FACTS

[3] The appellant was charged before the Sessions Court in Kangar on 15 March 2019 for an offence under s 15(1)(a) of the DDA which is punishable under s 39C(1) of the DDA. The charge reads as follows:

> Bahawa kamu pada 13/4/2017 jam lebih kurang 8.55 pagi bertempat di sebuah rumah beralamat No 117 Lorong 1, Taman Utara Jaya Kuala Perlis di dalam Daerah Kangar, di dalam Negeri Perlis, telah didapati memberikan diri kamu sendiri dadah berbahaya iaitu Methamphetamine dan kamu juga telah mempunyai (2) rekod lampau kesalahan lampau di bawah seksyen 15(1)(a) Akta Dadah Berbahaya 1952 dalam kesalahan seperti berikut:-
>
> (i) NO KES MAHKAMAH KANGAR: 83D-495-2008
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> Tarikh Hukuman: 29/1/2009
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> (ii) NO KES MAHKAMAH KANGAR: 83D-388-07/2014
>
> Tarikh Hukuman: 10/7/2014
>
> Oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 15(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum dibawah seksyen 39C(1) akta yang sama.
>
> Hukuman:
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> Jika sabit kesalahan hendaklah dipenjara tidak kurang daripada 5 tahun dan tidak lebih daripada 7 tahun dan dikenakan hukuman sebat tidak lebih dari 3 sebatan.

[4] Upon conviction, the appellant is liable to be punished with imprisonment for a term which shall not be less than five years but shall not exceed seven years, and shall also be punished with whipping of not more than three strokes.

[5] The appellant had claimed trial to the said charge. At the conclusion of the trial, the learned sessions court judge had found the appellant guilty of the said offence and had sentenced the appellant to six years imprisonment, two strokes and two years police supervision.

[6] Dissatisfied with the conviction and the sentence imposed by the trial court, the appellant had appealed to this court against the whole decision of the learned sessions court judge.

[7] After scrutinizing and considering the records of appeal, the ground of decision of the learned sessions court judge and the submissions by both parties, this court had affirmed the appellant's conviction under s 15(1)(a) of the DDA but had substituted the sentence passed by the learned sessions court judge under s 39C(1) of the DDA with a fine of RM3,000 in default five months imprisonment under s 15(1)(a) of the DDA.

[8] The appellant did not appeal against both conviction and sentence imposed by this court. Therefore, the appellant's conviction for the offence of administering to himself methamphetamine under s 15(1)(a) of the DDA is sustained.

[9] The respondent however did not satisfy with the decision of this court in substituting the conviction and punishment of the appellant under s 15(1)(a) of the DDA which is punishable under s 39C(1) of the DDA with a conviction and punishment under s 15(1)(a) of the same Act. Hence, this appeal.

ISSUES TO BE DECIDED

[10] The issue to be decided in the appellant's appeal before this court is whether the conviction and sentence passed by the learned sessions court judge under s 15(1)(a) of the DDA which is punishable under s 39C(1) of the DDA is correct and in accordance with the law.

FINDING AND DECISION OF THE COURT

[11] In this case, the appellant was charged with an offence under s 15(1)(a) of the DDA which is punishable under s 39C(1) of the DDA for administering to himself methamphetamine. Methamphetamine has been categorised as dangerous drug under the First Schedule of the DDA. The provisions read as follows:

(a) s 15(1)(a) of the DDA:

Section 15 Self administration.

(1) Any person who —

(a) consumes, *administers to himself* or suffers any other person, contrary to section 14 to administer to him *any dangerous drug specified in Parts III and IV of the First Schedule;* or

(b) is found in any premises kept or used for any of the purposes specified in section 13 in order that any such dangerous drug may be administered to or smoked or otherwise consumed by him,

shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years.

(2) ...

(b) s 39C(1) of the DDA:

Section 39C Increased penalty where person has prior admissions or convictions.

(1) Where a person who has not less than —

(a) two previous admissions;

(b) *two previous convictions under* paragraph 10(2)(b) or *paragraph 15(1)(a)* or any combination of the sections;

(c) one previous admission and one previous conviction under paragraph 10(2)(b) or paragraph 15(1)(a);

(d) one previous admission and two previous convictions under section 31A; or

(e) one previous conviction under paragraph 10(2)(b) or paragraph 15(1)(a) and two previous convictions under section 31A,

is found guilty of an offence under paragraph 10(2)(b), *paragraph 15(1)(a)* or section 31A, he shall, instead of being liable to the punishment provided for that offence under the section under which he has been found guilty, *be punished with imprisonment for a term which shall not be less than five years but shall not exceed seven years, and he shall also be punished with whipping of not more than three strokes.*

[12] Based on the abovementioned provisions, it is the opinion of this court that to secure a punishment under s 39C(1) of the DDA, the onus lies on the respondent to prove that the appellant had two previous convictions under s 15(1)(a) of the DDA, failing which the appellant will only be liable to a punishment provided for under s 15(1)(a) of the DDA.

[13] In this case, for the purpose of proof of the appellant's two previous convictions under s 15(1)(a) of the DDA, the respondent had tendered the appellant's records of conviction (exh P9) through the Assistant Registrar of the Kangar Court (SP3).

[14] On the admissibility of the evidence of SP3 and exh P9, the learned deputy public prosecutor in his written submission submitted as follows:

5. Berdasarkan peruntukan seksyen 400 KTJ ini, jelas memperuntukkan terdapat 2 cara/(modes) iaitu:

(a) by an extract certified under the of the officer having the custody of records of the Court whether of Malaysia or the Republic of Singapore which conviction or acquittal was *had to be a copy of the sentence or order; or*

(b) in case of a conviction either by a certificate signed by the officer in charge of the prison Malaysia or the Republic of Singapore in which the punishment or any part of it was inflicted, or by production.

6. Walau bagaimanapun, seksyen 400 KTJ ada memperuntukkan bahawa: *'in addition to any other mode provided by any law for the time being in force*'.

7. Pihak responden menghujahkan bahawa undang-undang memberikan cara dan metodologi yang luas untuk membuktikan rekod sabitan lampau seseorang itu dan tidak hanya tertakluk kepada peruntukan seksyen 400 KTJ sahaja.

8. Antaranya termasuklah cara yang diperuntukkan oleh Akta Keterangan 1950. Selain seksyen 400 KTJ, di dalam Akta Keterangan 1950, terdapat banyak cara untuk membuktikan rekod sabitan lampau seseorang OKT. Di antaranya adalah:

(i) Seksyen 60 Akta Keterangan memperuntukkan perkara-perkara yang berada di dalam pengetahuan peribadi seseorang itu.

60 Oral evidence must be direct

(1) Oral evidence shall in all cases whatever be direct, that is to say —

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

(c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(ii) Matters that the Court takes *Judicial Notice* pursuant to section 57 Evidence Act.

Facts of which court must take judicial notice

(1) The court shall take judicial notice of the following facts:

(g) the seals of all the courts of Malaysia all seals which any person is authorized to use by any law in force for the time being in Malaysia or any part thereof, all seals of which English courts take judicial notice, and the seals of Courts of Admiralty and maritime jurisdiction and of notaries public;

(m) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and other persons authorized by law to appear or act before it.

9. Berlandaskan kepada seksyen 60 dan 57 Akta Keterangan 1950, Mahkamah boleh menerima pembuktian rekod sabitan lampau OKT melalui keterangan lisan PW3/SP3 yang disokong dengan Eksibit P9 berdasarkan alasan-alasan seperti berikut:

(i) SP3 merupakan seorang Penolong Pendaftar Mahkamah Rendah Kangar. SP3 telah memberikan keterangan bersumpah secara lisan untuk mengesahkan OKT mempunyai 2 rekod sabitan lampau di bawah seksyen 15(1)(a) ADB 1952.

(ii) SP3 sememangnya mempunyai akses terhadap segala dokumen dan rekod-rekod di Mahkamah Rendah.

(iii) Eksibit P9 disahkan dan ditandatangani oleh SP3 setelah membuat semakan dengan *Rekod Mahkamah.*

(iv) Eksibit P9 jelas mengandungi 2 rekod sabitan OKT di bawah seksyen 15(1)(a) ADB 1952.

(v) Rekod RJ2B yang dikeluarkan oleh Pendaftar Penjenayah Malaysia juga akan menyediakan rekod sabitan berdasarkan keputusan dan maklumat daripada Mahkamah juga.

[15] In summary, the learned deputy public prosecutor submitted that by virtue of s 400 of the Criminal Procedure Code (Act 593) ('the CPC'), in any inquiry, trial or other proceeding under the CPC, a previous conviction may be proved in addition to any other mode provided by any law for the time being in force.

[16] Hence, according to the said provision, it was submitted that there are many ways to prove one's previous conviction, such as by way of oral evidence under s 60 (oral evidence must be direct) and judicial notice under s 57 (facts of which court must take judicial notice) of the Evidence Act 1950 (Act 56).

[17] Pursuant to the abovementioned provisions, it was also contended by the learned deputy public prosecutor that the tendering of exh P9 by the Assistant Registrar of the Kangar Court is in accordance with the law and therefore, is admissible under the rule of evidence.

[18] Apart from establishing her position as the Assistant Registrar of the Kangar Court who has access to the court's documents and records, no other evidence was offered by the prosecution on the qualification and competency of SP3 to confirm, to tender and to prove the appellant's previous convictions.

[19] The appellant on the other hand contended that the Assistant Registrar of the Kangar Court was not a qualified and competent authority to confirm and to tender the two previous convictions of the appellant under s 15(1)(a) of the DDA (exh P9) in the court, as the only qualified and competent authority to prove one's previous conviction is the Registrar of Criminals for the Federation.

[20] Therefore, it was submitted by learned counsel for the appellant that the prosecution had failed to prove that the appellant had two previous convictions under s 15(1)(a) of the DDA. Consequently, the appellant was not liable to be convicted and punished for the offence under s 15(1)(a) of the DDA which is punishable under s 39C(1) of the DDA. Hence, the sentence imposed by the learned sessions court judge under s 39C(1) of the DDA ought to be set aside and substituted with a lesser punishment under s 15(1)(a) of the DDA, in case the appellant's conviction under s 15(1)(a) of the DDA is sustained.

[21] In his submission, learned counsel for the appellant had referred to the decision of this court in *Azizy bin Samsudin v Public Prosecutor* [2020] MLJU 1967; [2020] 1 LNS 1725 and hence, contended that Puan Monica Joseph Gaisah who is the Assistant Registrar of the Kangar Court (SP3) was not a qualified person to confirm and to tender the appellant's previous convictions under s 15(1)(a) of the DDA. Learned counsel for the appellant had quoted the judgment of Arik Sanusi Yeop Johari JC as follows:

> [45] It is the considered view of this court, based on the above provisions it is clear that in order to prove one's previous conviction under any law in the country, it is within the power and competency of the Registrar of Criminals for the Federation or any officer appointed by the Yang di-Pertuan Agong pursuant to s 3 of Act 7.
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> [46] Since SP3 is not appointed under Act 7 to confirm and to tender the appellant's previous conviction, this court is of the view that SP3 is not a qualified 'officer' and competent authority within the ambit of Act 7. Therefore, this court finds that the learned sessions court judge falls into error in accepting the evidence of SP3 relating to the two previous convictions of the appellant in exh P10 and thereafter sentenced the appellant in accordance with the punishment provided for under s 39C(1) of the DDA.
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> [47] As SP3 is not a qualified and competent authority under the law to confirm and to tender the appellant's previous convictions as evidence in the court, this court finds that the prosecution has failed to prove a prima facie evidence under s 39C(1) of the DDA against the appellant. Hence, this Court has substituted the sentence passed by the learned sessions court judge under s 39C(1) of the DDA to 24 months imprisonment under s 15(1)(a) of the DDA.

[22] Based on the case cited above, the appellant's learned counsel submitted that under the Registration of Criminals and Undesirable Persons Act 1969 (Act 7) and s 400 of the CPC, only the Registrar of Criminals for the Federation is vested with the power and authority to keep and maintain a register containing registrable particulars relating to the States of Malaysia and any country outside the Federation which includes Singapore. This does not include an Assistant Registrar of a Court.

[23] Apart from *Azizy bin Samsudin v Public Prosecutor*, this court has also had the opportunity to decide on similar legal issues in the case of *Mohd Azmeer Yusnar bin Romli lwn Pendakwa Raya* [2020] MLJU 1905 and *Public Prosecutor v Muhammad Zikiri bin Ramli* [2021] MLJU 821.

[24] In answering the issue of whether SP3 is a qualified and competent authority to confirm, to tender and to prove the appellant's previous convictions before the sessions court, this court will refer to s 400 of the CPC and the Registration of Criminals and Undesirable Persons Act 1969.

[25] For ease of reference, s 400 of the CPC provides as follows:

> 400 How previous conviction or acquittal may be proved
>
> (1) In any inquiry, trial or other proceeding under this Code a *previous conviction* or acquittal or an order directing any person to be under the supervision of the police *may be proved* in addition to any other mode provided by any law for the time being in force —
>
> (a) *by an extract certified under the hand of the officer having the custody of the records of the Court whether of Malaysia or the* Republic of Singapore *in which that conviction or acquittal was had to be a copy of the sentence or order; or*
>
> (b) in case of a conviction either by a certificate signed by the officer in charge of the prison in Malaysia or the Republic of Singapore in which the punishment or any part of it was inflicted, or by production of the warrant of commitment under which the punishment was suffered, together with, in each of those cases, evidence as to the identity of the accused person with the person so convicted or acquitted.
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> (2) In case the officer in charge of any prison shall state in any certificate signed by him that the fingerprints which appear on the certificate are those of the person to whom the certificate relates, that certificate shall be evidence of the fact so stated.
>
> (3) Every Court shall presume to be genuine every document purporting to be a certificate of conviction and purporting to be signed by the officer in charge of any prison in Malaysia or the Republic of Singapore, and shall also presume that the officer by whom the document purports to be signed was when he signed it the officer in charge of the prison mentioned in that document.'.

[26] From the abovementioned provision, it is clear that 'previous conviction' may be proved by an extract certified under the hand of the officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore. However, the CPC does not define who is 'the officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore'.

[27] As the CPC is a law of general application, reference has to be made to the Registration of Criminals and Undesirable Persons Act 1969, a specific law that governs matters pertaining to previous conviction, in order to determine who is the intended 'officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore', referred to in s 400 of the CPC.

[28] Based on the long title of the Registration of Criminals and Undesirable Persons Act 1969, the objective of the Act is 'to consolidate and amend the law providing for the *registration of certain criminals*, banishees, expelees, deportees and restrictees and for other purposes connected with it'.

[29] Pursuant to this long title, s 7 of the Registration of Criminals and Undesirable Persons Act 1969 provides provision on the register of registrable particulars and the duties of the Registrar as follows:

> 7 Register of registrable particulars to be kept
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> (1) Subject to section 12 *the Registrar shall keep and maintain* —
>
> (a) *a register containing registrable particulars* relating to the States of Peninsular Malaysia, Sabah and Sarawak in the Federal Capital;
>
> (b) *a register containing registrable particulars* relating to Sabah in Sabah; and
>
> (c) *a register containing registrable particulars* relating to Sarawak in Sarawak.
>
> *The Registrar may keep and maintain a register containing registrable particulars relating to any country outside the Federation* in respect of which an order has been made pursuant to section 4 if the registrable particulars are forwarded to him by the Government of that country.'

[30] According to the said provision, *the Registrar is authorized to keep and maintain a register* containing *registrable particulars* relating to the States of Peninsular Malaysia, Sabah, Sarawak and any country outside the Federation including Singapore, as provided for under s 400 of the CPC.

[31] The words 'Registrar', 'register' and 'registrable particulars' in s 7 of the Registration of Criminals and Undesirable Persons Act 1969 are defined in s 2 of the same Act as follows:

(a) *'Registrar'* means the *Registrar of Criminals* and any other person or officer appointed under s 3;

(b) *'register'* means the *register kept and maintained under s 7*; *and*

(c) *'registrable particulars'* means *the particulars of any conviction or sentence in respect of a registrable offence;*the particulars of any order relating to banishees, expelees, deportees or restrictees; the name, description, photograph and finger impressions or classification of finger impressions of any person convicted of a registrable offence, or of any banishee, expelee, deportee or restrictee and others.

[32] The word 'registrable offence' as found in the definition of 'registrable particulars' is defined in s 2 of the Registration of Criminals and Undesirable Persons Act 1969 to mean '*any offence which is registrable under this Act as specified in the First* and Second *Schedules*'.

[33] Based on the First Schedule of the Registration of Criminals and Undesirable Persons Act 1969, *all offences under the Dangerous Drugs Act 1952* have been prescribed as registrable offence under the Act. Hence, this would include the offence under s 15(1)(a) of the DDA, as prescribed in the charge proffered against the appellant.

[34] In accordance with the above provisions, it is clear that the Registration of Criminals and Undesirable Persons Act 1969 is a specific act enacted by the Parliament to provide for the registration of criminals. For this purpose, only the Registrar of Criminals is authorised under the Act to keep and maintain the particulars of any conviction or sentence in respect of a registrable offence as specified in the First and Second Schedules of the Act.

[35] As the Registration of Criminals and Undesirable Persons Act 1969 is a specific law regulating matters relating to the registration of criminals in this country, this court is of the view that the Act shall prevail over s 400 of the CPC, which is a general law. Thus, the respondent's submission on the admissibility of one's previous conviction under s 400 of the CPC and the Evidence Act 1950 cannot sustain.

[36] The Federal Court in the case of *Abdullah bin Atan v Public Prosecutor and other appeals* [2020] 6 MLJ 727 has decided that if there is conflict between a specific law and a general law, the matter can be resolved in two ways, namely through the maxim *generalia specialibus derogant* or the doctrine of harmonious construction. In Her Ladyship's judgment, Tengku Maimun bt Tuan Mat Chief Justice has stated as follows:

> Furthermore, the DDA is a specific Act relating to and dealing with trials in respect of dangerous drugs. The CPC, on the other hand, is a law of general application.

Where there is a *conflict between a specific law and a general law, the conflict may be resolved in one of two ways. The first is via the maxim generalia specialibus derogant. The second is the doctrine of harmonious construction*. (Emphasis added.)

[37] Relying on the principles in *Abdullah bin Atan v Public Prosecutor and other appeals* this court is of the considered view that since s 400 of the CPC, which is a general law, does not define who is the 'officer' that can prove one's previous conviction, by reading such provision harmoniously with the Registration of Criminals and Undesirable Persons Act 1969, which is a specific law relating to the registration of criminals, it is apparent that the 'officer' referred to in the CPC is the Registrar of Criminals appointed by the Yang di-Pertuan Agong under s 3 of the Registration of Criminals and Undesirable Persons Act 1969, whose power among other things is to keep and maintain the particulars of any conviction or sentence in respect of a registrable offence as specified in the First and Second Schedules of the Act.

[38] According to the authorities cited above, it is clear that to prove one's previous conviction under any law in this country, it is within the power and competency of the Registrar of Criminals for the Federation or any officer appointed by the Yang di-Pertuan Agong pursuant to s 3 of the Registration of Criminals and Undesirable Persons Act 1969, and no one else.

[39] Since there was no evidence that SP3 was appointed by the Yang di-Pertuan Agong pursuant to s 3 of the Registration of Criminals and Undesirable Persons Act 1969, this court is of the opinion that SP3 had no locus, qualification and competency under the Act to confirm, to tender and to prove the appellant's previous convictions under s 15(1)(a) of the DDA in the court.

[40] Therefore, it is the considered view of this court that exh P9 which was tendered by the prosecution to prove the appellant's two previous convictions under s 15(1)(a) of the DDA was inadmissible and had no evidential value. As a result, the conviction and sentence imposed by the learned sessions court judge on the appellant under s 15(1)(a) of the DDA which is punishable under s 39C(1) of the same Act was wrong and not in accordance with the law and hence, should be substituted with a conviction and punishment under s 15(1)(a) of the DDA.

[41] With regard to the punishment for the offence under s 15(1)(a) of the DDA, it provides that any person found guilty of the said offence, shall be liable on conviction to a fine not exceeding five thousand ringgit *or* to imprisonment for a term not exceeding two years. Thus, the punishment is either in the form of a fine *or* an imprisonment.

[42] In this case, this court took note that the appellant had been in remand since 18 January 2018, the day he was arrested, until 27 November 2018, the day he was offered bail by the sessions court for RM5,000 with one surety. All in all, he had been in remand for 11 months. His trial was only commenced on 8 May 2019 and ended on 20 December 2019. After his conviction, the sessions court had allowed stay pending the appellant's appeal to the High Court.

[43] In passing the appropriate sentence, this sourt had taken into consideration that the appellant had spent 11 months in remand and he had no previous conviction. This court also took into consideration that under s 15(1)(a) of the DDA, the court has the discretion to impose *either* a punishment of fine *or* an imprisonment.

[44] Since the appellant had been in remand for 11 months and being a first offender, this court is of the view that it would not be appropriate to put the appellant again behind bars. Therefore, a fine of RM3,000 from the maximum of RM5,000 in default five months imprisonment and two years police supervision under s 38B of the DDA with effect from the date of the disposal of the appeal, would be the appropriate and just punishment imposed on the appellant, and it is not manifestly inadequate.

CONCLUSION

[45] Based on the reasons adumbrated above, the appellant's appeal was allowed and the whole decision of the learned sessions court judge was set aside and substituted with a conviction and punishment of a fine of RM3,000 in default five months imprisonment under s 15(1)(a) of the DDA and two years police supervision.

Appeal allowed.

Reported by Nabilah Syahida Abdullah Salleh